

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WYCKOFF FARMS,  
INCORPORATED, a Washington  
corporation,

Plaintiff,

v.

INDUSTRIAL CONTROL CONCEPTS,  
INC., d/b/a ICC, INC., a Missouri  
corporation, ICC NORTHWEST, INC.,  
an Oregon corporation, and ICC  
TURNKEY, INC., a Missouri  
corporation,

Defendants.

NO: 4:20-CV-5095-TOR

ORDER GRANTING PLAINTIFF'S  
THIRD MOTION FOR PARTIAL  
SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff's Third Motion for Partial Summary Judgment (ECF No. 109). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the reasons discussed below, Plaintiff's Third Motion for Partial Summary Judgment (ECF No. 109) is granted.

ORDER GRANTING PLAINTIFF'S THIRD MOTION FOR PARTIAL  
SUMMARY JUDGMENT ~ 1

## BACKGROUND

This case concerns construction contracts related to an extraction facility. ECF No. 82. On September 21, 2021, the Court found by Defendants' stipulation that they had a duty to defend Plaintiff in an underlying state court action. *See* ECF No. 37. The Court also found Plaintiff incurred reasonable fees, costs, and prejudgment interest for defending the third-party's claim of lien and related state court litigation. *Id.* at 4.

On December 9, 2021, the Court granted Plaintiff's second motion for partial summary judgment, awarding reasonable attorneys fees and costs associated with discovery and motion practice in the underlying action. ECF No. 73.

On April 21, 2022, Plaintiff filed the present motion, seeking fees and costs incurred since the previous motion was filed in October 2021.<sup>1</sup> ECF No. 109. Defendants' response was due on May 12, 2022. LCivR 7(c)(2)(B)(ii). Defendants did not file a response.

## DICSUSSION

As an initial matter, the "Court may consider a fact undisputed and admitted unless controverted by the procedures set forth in LCivR56(c)." LCivR 56(e).

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<sup>1</sup> Plaintiff's motion erroneously states it is seeking fees and costs incurred since September 2021. This appears to be a repeated typographical error.

1 Because Defendant did not file any opposition to Plaintiff's motion, the Court  
2 accepts facts as undisputed. The Court incorporates its prior rulings entitling  
3 Plaintiff to fees and costs associated with defending the underlying action. ECF  
4 Nos. 37, 73.

5 The reasonableness of a trial court's award of attorney's fees is reviewed for  
6 abuse of discretion. *Sapper v. Lenco Blade, Inc.*, 704 F.2d 1069, 1073 (9th Cir.  
7 1984); *Red v. Kraft Foods Inc.*, 680 F. App'x 597, 599 (9th Cir. 2017). Courts  
8 assess attorney's fees by calculating the lodestar figure, which is the number of  
9 hours reasonably expended multiplied by the reasonable hourly rate of  
10 compensation. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Johnson v. MGM*  
11 *Holdings, Inc.*, 943 F.3d 1239, 1242 (9th Cir. 2019). This lodestar calculation is  
12 presumptively reasonable. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978  
13 (9th Cir. 2008).

14 When determining hourly rates, courts look to the "prevailing market rates  
15 in the relevant community." *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir.  
16 2020) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Courts typically use  
17 the rates of comparable attorneys in the forum district, here the Eastern District of  
18 Washington. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *Montes v.*  
19 *City of Yakima*, No. 12-CV-3108-TOR, 2015 WL 11120966, at \*3 (E.D. Wash.  
20 June 19, 2015). When determining the reasonableness of the hours expended, the

1 Court should exclude from its calculation “hours that were not reasonably  
2 expended” such as hours that are “excessive, redundant, or otherwise  
3 unnecessary.” *Gates*, 987 F.2d at 1397 (quoting *Hensley*, 461 U.S. at 433-34).

4 In its prior order, the Court found Plaintiff’s attorney rates comparable to  
5 other attorneys with similar levels of experience. ECF No. 37 at 5. The Court also  
6 finds the rates of outside counsel similarly comparable. ECF No. 110-1 at 8-37.

7 As to the hours expended, the Court finds the hours are reasonably expended and  
8 are not excessive, redundant, or otherwise unnecessary. *Gates*, 987 F.2d at 1397.

9 The fees and costs incurred involve an appeal in the underlying state action and  
10 partial judgment collection efforts requiring retention of outside counsel in  
11 Washington, Oregon, and Missouri. *See* ECF No. 110.<sup>2</sup> Therefore, summary  
12 judgment on the fees incurred since October 2021 is appropriate.

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16 <sup>2</sup> Defendant agreed “to defend, indemnify, and hold harmless [Wyckoff] from  
17 and against all claims, actions, proceedings, liabilities, losses, damages, costs and  
18 expenses, arising out of third party actions, including reasonable attorney’s fees  
19 and defense costs, which [Wyckoff] may sustain resulting from the acts or  
20 omissions of [ICC].” ECF No. 30 at 17.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Third Motion for Partial Summary Judgment (ECF No. 109) is

3 **GRANTED.**

4 2. Plaintiff Wyckoff Farms, Incorporated is awarded a **total amount of**

5 **\$49,618.62** payable by Defendants ICC, Inc., ICC Northwest, Inc, and

6 ICC Turnkey, Inc. Upon entry of judgment, interest will accrue on the

7 unpaid balance at the statutory rate for federal judgments according to 28

8 U.S.C. § 1961.

9 3. Pursuant to Fed. R. Civ. P. Rule 54(b), the Clerk of Court shall enter a

10 partial judgment in favor of Wyckoff Farms, Incorporated and against

11 Defendants ICC, Inc., ICC Northwest, Inc, and ICC Turnkey, Inc.

12 The District Court Clerk is directed to enter this Order and Judgment

13 accordingly, and provide copies to counsel. The file remains open.

14 DATED June 9, 2022.



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THOMAS O. RICE

United States District Judge